

In Confidence

Office of the Minister of Conservation

Cabinet Legislation Committee

Hauraki Gulf / Tīkapa Moana Marine Protection Bill – Authorisation for Amendment Papers

Proposal

- 1 This paper
 - 1.1 seeks Cabinet’s authorisation for two Amendment Papers for the Hauraki Gulf / Tīkapa Moana Marine Protection Bill (the **Bill**) to be submitted to the Clerk for consideration at the Committee of the Whole House;
 - 1.2 provides draft infringement offence and ring net fishing regulations that will be finalised through a subsequent Cabinet paper seeking approval to submit them to the Executive Council once the Bill is enacted.

Relation to government priorities

- 2 One of my Cabinet-agreed Conservation portfolio priorities is to deliver on targeting high value conservation areas, which includes progressing the Bill.
- 3 The Bill was on the 2024 Legislative Programme as category 4 priority (to be passed by the end of 2024 if possible) and has been reinstated on the 2025 programme with the same priority.

Executive Summary

- 4 In September 2024, Cabinet agreed to amendments to the Bill to be progressed through an Amendment Paper at the Committee of the Whole House [CAB-24-MIN-0386]. These amendments include the removal of the ability to regulate customary non-commercial fishing beyond existing regulations under the Fisheries Act 1996, to provide for limited ring net fishing in two high protection areas (HPAs), and other technical changes.
- 5 Cabinet authorised me to make further detailed policy decisions in line with decisions in the Cabinet paper and in agreement with the Minister for Oceans and Fisheries, as appropriate.
- 6 The first Amendment Paper (PCO 23438-1) reflects the decisions made by Cabinet in September 2024, and subsequent policy decisions on ring net fishing, delegated to me by Cabinet, as well as technical and minor amendments to correct errors or to better achieve policy intent.
- 7 The second Amendment Paper (PCO 23438-2) reflects changes to the maps in schedules 2-4 of the Bill to reference the now completed cadastral survey plans. These changes are progressed through a separate Amendment Paper on the advice of the

House Office and for technical reasons related to how changes can be marked up in an Amendment Paper by the Parliamentary Counsel Office.

- 8 Two sets of regulations are critical to be in place following commencement of the Bill: infringement regulations and ring net fishing regulations.
- 9 The infringement regulations are an important part of the enforcement approach for the Bill, deterring low-level offending in protection areas. These were authorised by Cabinet in 2023 [LEG-23-MIN-0151 refers]. The ring net fishing regulations set out those eligible for the provision and the conditions on their ring net fishing.

Background

- 10 The Hauraki Gulf / Tīkapa Moana (the **Gulf**) is a taonga of natural, economic, recreational and cultural importance. However, State of the Gulf reports over the last 20 years have shown it to be in an ongoing state of environmental decline.¹
- 11 Cabinet has previously noted that marine protection can help to help reverse the decline in health and mauri of the Gulf [CAB-22-MIN-0599.02]. Marine protection is a proven tool for biodiversity management both domestically and internationally.
- 12 To that end, the Bill will create new marine protected areas that will regulate a range of activities including fishing, discharges and dumping, building of structures, and damage to the seabed. The Bill would increase marine protection in the Gulf from 6.7%² to around 18% by establishing:
- 12.1 *12 high protection areas (covering 5.8% of the Gulf) to protect and restore marine ecosystems.* High protection areas will regulate a range of activities including commercial and recreational fishing and will provide for customary fishing;
- 12.2 *5 seafloor protection areas (covering 5.5% of the Gulf) to protect seafloor habitats and communities* by prohibiting bottom impacting fishing activities (e.g., bottom trawling and Danish seining) and other activities such as dredging, sand extraction, and mining; and
- 12.3 *two marine reserves (covering 0.2% of the Gulf)*, one adjacent to the existing Cape Rodney – Okakari Point Marine Reserve (Leigh/Goat Island), and one adjacent to Te Whanganui-o-Hei / Cathedral Cove Marine Reserve. This will in effect extend the two existing marine reserves. These marine reserves will protect the marine environment by providing the same protections as the existing marine reserves, including prohibiting all fishing and impactful activities.
- 13 Overall, the Bill responds to and balances growing public demand for new marine protection in the Gulf. The approach taken means we can protect areas with important biodiversity in a way that has considered the impacts on existing users.

¹ Every three years, the Hauraki Gulf Forum produces a report on the state of the Hauraki Gulf environment. The reports can be found at <https://gulfjournal.org.nz/state-of-the-gulf>

² Existing marine protection in the Gulf consists of 0.3% in marine reserves and 6.4% in cable protection zones.

- 14 In September 2024, Cabinet agreed to amendments to be progressed through an Amendment Paper at the Committee of the Whole House [CAB-24-MIN-0386]. A regulatory impact statement was not provided to Cabinet for these proposed amendments, as such, a supplementary disclosure statement has been prepared (Attachment A).
- 15 The Bill was read for a second time in December 2024 in response to the Environment Select Committee report back on the Bill.

Regulations associated with the Bill

- 16 Cabinet authorised drafting instructions to be issued to the Parliamentary Counsel Office for secondary legislation outlining the infringement offences, fees, notice and notice reminders under the Bill [LEG-23-MIN-0151 refers]. A near-final version of these regulations is included in Attachment B.
- 17 Cabinet agreed to a provision for limited ring net fishing in two high protection areas and authorised me to make further policy decisions in agreement with the Minister for Oceans and Fisheries as appropriate [CAB-24-MIN-0386 refers].
- 18 I consider it is appropriate for the empowering provision for ring net fishing to be in primary legislation and details of conditions to be in secondary legislation, in regulations. This provides for conditions to be more simply amended, if required, from the three-year review process or for technical changes. A near-final version of these regulations is included in Attachment C.

Analysis

- 19 The amendments that have been drafted into the Amendment Papers are outlined below. Unless otherwise stated, the amendments are included in the first Amendment paper (PCO 23438-1).

Te Tiriti o Waitangi Clause

- 20 The Amendment Paper adds clause 4(2) which provides clarity on how the Bill gives effect to te Tiriti o Waitangi by ‘signposting’ the relevant clauses. A separate new clause 8A makes it clear that all te Tiriti o Waitangi settlements will be upheld. The proposed amendments to clauses 4(2) and 8A(1)(b) also make it clear that customary rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 are upheld.
- 21 Any reference to Treaty principles in the Bill means that the Act falls in scope of the Ministry of Justice-led review of legislative references to the principles of the Treaty of Waitangi [SOU-24-MIN-0105].

Removal of the ‘no compensation’ clause

- 22 The Amendment Paper removes clause 9A, the ‘no compensation’ clause. This will provide for parties to test their claim to compensation should they choose to.

Provision for ring net fishing

- 23 The Amendment Paper adds clause 19A which provides for ring net fishing with the following conditions:
- 23.1 ring net fishing can only be carried out by commercial permit holders who have reported catch taken by the ring net fishing method in one or both of the two identified high protection areas in one or more of the three fishing years between 21/22 and 23/24;
 - 23.2 the Director-General of the Department of Conservation is empowered to identify the 5 fishers these criteria apply to by a letter of authorisation;
 - 23.3 the high protection areas in which this can occur are Kawau Bay High Protection Area and Rangitoto and Motutapu High Protection Area; and
 - 23.4 the person undertaking ring net fishing must comply with the Fisheries Act and any secondary legislation made under that Act.
- 24 The Amendment Paper adds clause 67 which provides a regulation making power for ring net fishing and states the following:
- 24.1 the Minister of Conservation must have concurrence from the Minister for Oceans and Fisheries before recommending regulations;
 - 24.2 ring net fishing can only occur between 1 March and 31 August each year;
 - 24.3 ring net fishing is limited to the targeting of kahawai, grey mullet and trevally; and
 - 24.4 regulations can be made to provide for any other conditions considered necessary (further conditions on ring net fishing included in regulations are discussed in paragraph 36).
- 25 The Amendment Paper adds clause 68A which provides for a Ministerial review of ring net fishing provisions. This clause states that sections 19A, 67 and any regulations made under section 67 are subject to the review. The review has the following parameters:
- 25.1 the Minister of Conservation and the Minister for Oceans and Fisheries must jointly initiate the review before the expiry of three years from commencement of the Bill;
 - 25.2 the review must assess the costs and benefits of the ring net fishing provisions and the effect on the relevant high protection area and any biodiversity objectives for those areas;
 - 25.3 the Minister of Conservation must make a joint recommendation with the Minister for Oceans and Fisheries, within one year of the review being initiated, on if the provisions should be retained, amended or repealed; and

- 25.4 there must be reasonable opportunity for interested parties, including Te Ohu Kaimoana, to make submissions.
- 26 The Amendment Paper adds clause 68B which provides for an Order in Council to repeal the provisions following the review. Recommendations for the Order in Council must be consistent with recommendations from the review and be made with concurrence from the Minister for Oceans and Fisheries.
- 27 I note that there has been strong opposition to these provisions from environmental groups as well as the general public. A sunset clause to create a clearer timeframe for the provisions was proposed to address these concerns, however ultimately this was not agreed to in favour of the three-year review provision discussed above.

Customary non-commercial fishing

- 28 The Bill provides for customary non-commercial fishing to continue in SPAs and HPAs. The Amendment Paper removes customary non-commercial fishing from the scope of regulations able to be developed under clause 66 of the Bill. In effect this means that customary non-commercial fishing in HPAs will be regulated through the Fisheries Act 1996 only and will not be able to be regulated under the Bill if required to give effect to biodiversity objectives within HPAs.
- 29 The following consequential changes have been made to give effect to this amendment:
- 29.1 removal of reference to compliance to these regulations under clauses 5B and 19(1)(b);
- 29.2 removal of the requirement to consult with the Minister for Oceans and Fisheries (cl 66);
- 29.3 amendment of the requirement for biodiversity objectives and associated regulations to be developed collaboratively with mana moana to require consultation only (cl 66); and
- 29.4 removal of clause 67 as this clause is largely redundant considering the other changes to the Bill.

Reference to whānau, hapū and iwi in the Bill

- 30 The Amendment Paper replaces all references to ‘whānau, hapū and iwi’ with ‘iwi’ to ensure that requirements in the Bill are not overly broad.

Other policy matters

- 31 The Amendment Paper includes other technical and minor amendments to fix errors or better give effect to the policy intent.

Second Amendment Paper (PCO 23438-2)

- 32 This Amendment Paper replaces the descriptions of the protection areas with reference to the cadastral survey plans and indicative maps are updated. There have been no significant changes to any boundaries.

Regulations

- 33 The following regulations have been drafted with the intention to be submitted to the Executive Council as soon as possible following commencement of the Bill; infringement regulations (Attachment B) and ring net fishing regulations (Attachment C).

Infringement regulations

- 34 In 2023, Cabinet authorised the development of infringement regulations [LEG-23-MIN-0151 refers]. The regulations are necessary for the operationalisation of the Bill as infringement offences are an important component of the regulatory system and deter low-level offending in protection areas.

Ring net regulations

- 35 The Bill will include the empowering provision for ring net fishing and set parameters under which it may occur. Further detail on the conditions for ring net fishing are included in regulations. These conditions sit more appropriately in regulations so they can be more simply amended if required through the review process or for technical changes.
- 36 As well as the matters outlined in the empowering provision (clause 67), the ring net fishing regulations outline the following conditions:
- 36.1 each fisher can only operate one fishing vessel at any one time;
 - 36.2 the fishing vessel must be six metres or less in length; and
 - 36.3 the fishing vessel must stay in the vicinity of the ring net while it is in operation.
- 37 The regulations will also give the Director-General of the Department of Conservation a power to identify the 5 commercial fishers to whom the provision applies by a letter confirming their authorisation.

Cost-of-living Implications

- 38 The amendments to the Bill will support select ring net fishers to continue to supply communities with affordable fish.

Financial Implications

- 39 There are no financial implications to the decisions sought in this paper.
- 40 Cabinet previously noted that implementation of the marine protection proposals will be funded through reprioritisation and transfer within Vote Conservation [CAB-22-MIN-0599.023].

- 41 The total cost of implementing the marine protection package is \$10.54 million over four years, with ongoing operational costs of \$3.505 million per year following that. Funding is through reprioritisation of Vote Conservation.

Legislative Implications

- 42 The Amendment Papers will be considered at the Committee of the Whole House. Amendments agreed to will be incorporated into the Bill. This is followed by the Third Reading of the Bill.
- 43 The regulations will be submitted to the Executive Council for gazettal following commencement of the Bill. I will provide a further Cabinet paper confirming submission of the regulations to the Executive Council once the Bill is enacted.

Impact Analysis

Amendment Papers

- 44 A Regulatory Impact Statement was prepared in accordance with Cabinet requirements on the marine protection proposals, including how customary non-commercial fishing was to be provided for. This was submitted to Cabinet in December 2022 [CAB-22-MIN-0599.02].
- 45 No further impact analysis was prepared when Cabinet made policy decisions on the proposal for the Amendment Papers [CAB-24-MIN-0386]. A Supplementary Analysis Report has now been completed (Attachment D).
- 46 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this policy proposal, as the threshold for significance is not met.
- 47 A quality assurance panel, with members from the Department of Conservation and Ministry for Primary Industries, has reviewed the Supplementary Analysis Report (SAR) regarding *Amendments to the Hauraki Gulf / Tīkapa Moana Marine Protection Bill*. The Panel has determined that the SAR *partially meets* the quality assurance criteria.
- 48 The Panel had the following comment on the SAR: “The SAR clearly acknowledges that the two proposals are constrained by decisions already made by Cabinet. Given no consultation has occurred on the two proposals and the lack of baseline data, the impacts of the two proposals are uncertain. This deficit places greater onus on the opportunities enabled in the Bill to review these provisions, and on compliance staff to monitor and evaluate potential negative effects on marine biodiversity in these protected areas.”

Infringement regulations

- 49 A Regulatory Impact Statement was prepared in accordance with Cabinet requirements for the development of infringement regulations. This was submitted to Cabinet in August 2023 [LEG-23-MIN-0151].

Ring net fishing regulations

- 50 No Regulatory Impact Statement was prepared for the ring net fishing regulations as the regulations directly give effect to policy decisions made by Cabinet [CAB-22-MIN-0599.02].

Human Rights

- 51 On 10 August 2023, the Ministry of Justice provided advice concluding that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

Consultation

- 52 Targeted agency consultation was carried out with the Department of the Prime Minister and Cabinet, Ministry for Regulation, Ministry for Primary Industries / Fisheries New Zealand, Te Tari Whakatau, Ministry for the Environment, the New Zealand Defence Force, Maritime New Zealand and the Ministry of Justice.
- 53 Consultation was also carried out with the ring net fishers to whom the provision will apply. The fishers advised that they support the provisions in the Bill and did not want to be identified in regulations.

Communications

- 54 The Amendment Papers will be published on the Parliament Website on the same day it is submitted to the Clerk.
- 55 The regulations will be notified in the Gazette soon after submission to the Executive Council.

Proactive Release

- 56 I intend to proactively release this Cabinet paper within 30 business days of decisions being confirmed by Cabinet, subject to redaction as appropriate under the Official Information Act 1982.

Next steps

- 57 Following approval from Cabinet, the Amendment Papers will be considered at the Committee of the Whole House, currently on the House of Representatives Order Paper.

Recommendations

The Minister of Conservation recommends that the Committee:

- 1 **note** that the Supplementary Analysis Report partially meets the quality assurance criteria;
- 2 **authorise** the Amendment Paper (PCO 23438-1) for submission to the Clerk to be considered at the Committee of the Whole House stage;

IN C O N F I D E N C E

- 3 **authorise** the Amendment Paper (PCO 23438-2) for submission to the Clerk to be considered at the Committee of the Whole House stage;
- 4 **note** the draft infringement offence regulations, attached as Attachment B to the paper;
- 5 **note** the draft ring net fishing regulations, attached as Attachment C to the paper; and
- 6 **note** that I will provide a further Cabinet paper seeking authorisation of the infringement offence regulations and the ring net fishing regulations to the Executive Council following commencement of the Bill.

Hon Tama Potaka

Minister of Conservation

Attachment A: Supplementary disclosure statement

Attachment A is withheld as it will be publicly available on this webpage: <https://disclosure.legislation.govt.nz/ap/government/2025/>

Attachment B: Draft infringement offences regulations

Attachment B is withheld under section 9(2)(h) of the Official Information Act

Attachment C: Draft ring net fishing regulations

Attachment C is withheld under section 9(2)(h) of the Official Information Act

Attachment D: Supplementary Analysis Report

Attachment D has been released separately as part of this package